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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,702	08/11/2003	Kelley Pate	1112.03001	1701
24254	7590	09/14/2005	EXAMINER	
ROGER A JACKSON, ESQ 800 PENNSYLVANIA SUITE 1504 DENVER, CO 80203-3185				LUONG, VINH
ART UNIT		PAPER NUMBER		
		3682		

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/604,702	PATE, KELLEY
	<b>Examiner</b> Vinh T. Luong	<b>Art Unit</b> 3682

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 29 June 2005.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 15-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 15-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

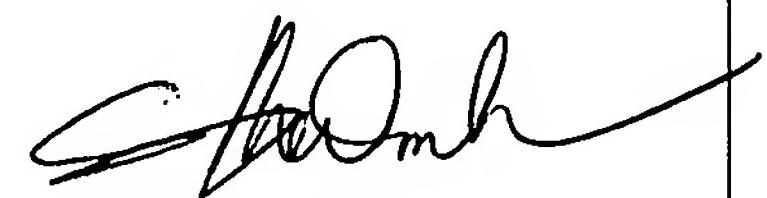
#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 29 June 2005 is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.



Vinh T. Luong  
Primary Examiner

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____ .  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/7/03, 10/14/03</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|  | 6) <input checked="" type="checkbox"/> Other: <u>Attachment</u> .           |

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1. The Amendment filed on June 29, 2005 has been entered.
2. Applicant's election without traverse of Group II in the reply filed on June 29, 2005 is acknowledged.
3. No claim is withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on June 29, 2005.
4. Applicant's election with traverse of the species of Fig. 8 in the reply filed on June 29, 2005 is acknowledged. The traversal is on the ground(s), *inter alia*, that: (a) there are two patentably distinct species in Group I, being represented by Figs. 1-3 and Figs. 2, 4, and 5. See page 9 of the response; and (b) there are two patentably distinct species in Group II, being the exemplary and alternative embodiments represented structurally by Figs. 1-3 and Figs. 2, 4, and 5 respectively, wherein Figs. 6-8 all apply to the exemplary and alternative embodiments represented, thus, the exemplary embodiment is represented by claims 15-17 and the alternative embodiment is represented by claims 18-20. This is not found persuasive because:
  - (a) Applicant admitted that there are two patentably distinct species in Group I, being represented by Figs. 1-3 and Figs. 2, 4, and 5. Therefore, a new restriction between the species of Figs. 1-3 and the species of Figs. 2, 4, and 5 in Group I replaces the previous restriction of species in Group I; and
  - (b) Similarly, Applicant admitted that there are two patentably distinct species in Group II, being the exemplary and alternative embodiments represented structurally by Figs. 1-3 and Figs. 2, 4, and 5 respectively. Therefore, a new restriction between the species of Figs. 1-3

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and the species of Figs. 2, 4, and 5 in Group II replaces the previous restriction of species in Group II.

The requirement is deemed proper and is therefore made FINAL.

5. No claim is withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on June 29, 2005.

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

7. Claims 15-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is unclear whether the term that appears at least twice such as "a manual handle apparatus" in lines 1 and 6 of claim 1 refers to the same or different things. See MPEP 2173.05(o).

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 15-17, as best understood, are rejected under 35 U.S.C. 102(b) as being anticipated by Newton (US Patent No. 5,165,673).

Regarding claim 15, compare Newton's Fig. 10 with Applicant's Fig. 5, Newton teaches a method of using a manual handle apparatus for use in selectively setting at least one of plurality of vise jaws 26 and 28 (Fig. 1) comprising the steps of:

(a) providing said manual handle apparatus that includes a disc 12 (Fig. 10) including a disc face (see Attachment) and a disc annular surface (Att.), said disc 12 having a disc axial axis (Att.) substantially perpendicular to said disc face (Att.), the disc axial axis (Att.) being positioned in a central portion of said disc, said disc also includes an aperture (Att.) positioned coincident with the disc axial axis (Att.), said aperture (Att.) is sized and configured to rotatably drive a vise shaft 2, said disc 12 also having an outer periphery (Att.) with a corrugated surface 85 (Fig. 1) adapted to provide a hand grip, and a hub (Att.) including a proximal end portion (Att.) and a distal end portion (Att.), said hub (Att.) having a hub axial axis (Att.) extending between said proximal and distal end portions, said hub proximal end portion (Att.) is adjacent to said disc annular surface (Att.) with the hub axial axis (Att.) positioned coaxial to the disc axial axis (Att.) with said hub (Att.) forming an extension from said disc annular surface (Att.), said hub (Att.) also includes an aperture (Att.) therethrough aligned with said disc aperture (Att.) therethrough, said hub distal end portion (Att.) positioned to face the vise (Figs. 17-19), said hub (Att.) also having an outer surface (Att.) not extending to said disc outer periphery (Att.) between said hub proximal and distal end portions (Att.) such that an annular recess is formed between said disc annular surface and said hub outer surface, said annular recess (Att.) is operational to allow a user's hand to exert axial force on said disc annular surface (Att.) away from the vise to remove said manual handle apparatus from the shaft 2;

- (b) grasping said disc outer periphery (Att.) in the user's hand;
- (c) aligning said hub aperture (Att.) of said hub distal end portion (Att.) to the vise shaft 2 and axially sliding said hub aperture (Att.) onto the vise shaft 2 and continuing to slide the shaft (2) through said disc aperture (Att.) until the shaft is flush with or extends beyond said disc face (Att.);
- (d) spinning said disc outer periphery 85 (Att.) by grasping said disc outer periphery 85 (Att.) in the user's hand to open at least one of the plurality of vise jaws 61 and 62 (Fig. 13) to position the vise jaws 61 and 62 to accept the work piece 63; and
- (e) rotating said disc outer periphery (Att.) by grasping said disc outer periphery 85 (Att.) in the user's hand to close at least one of the plurality of vise jaws 61 and 62 to clamp the work piece 63 such that an amount of clamping force placed upon the work piece 63 is limited by a frictional grip of the user's hand on said disc periphery. See col. 6, line 31, through col. 7, line 19.

Note that Newton's aperture is considered to be through the hub and the disc in the same manner as Applicant's aperture 60 in Fig. 5. Claim 15 and other claims below are anticipated by Newton since Newton teaches each and every positively claimed element of the claims, thus, Newton inherently teaches the method of using as claimed. Moreover, note that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963).

Regarding claim 16, said step of providing said manual handle apparatus further includes a means (Att.) for axially retaining said manual handle apparatus to the shaft 2 and an additional step after said aligning step further comprising engaging said means (Att.) between said manual handle apparatus and the shaft being operational to retain said manual handle apparatus on the shaft 2.

Regarding claim 17, said step of providing said manual handle apparatus further includes a crank 13 (Fig. 1) rotatably engaged to said disc face (Att.) and wherein said step of spinning is accomplished by grasping said crank 13 in the user's hand being operational to quickly rotate said disc (12) and open at least one of the plurality of vise jaws 61 and 62 to position the vise jaws 61 and 62 to accept the work piece 63.

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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12. Claims 15-17, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Newton in view of Baumgartner (US Patent No. 3,315,540) or Youngs (US Patent No. 123,852).

Assuming *arguendo* that Newton's hub/disc aperture is not interpreted as being through the hub/disc, the following rejection takes place:

Newton teaches the invention substantially as claimed. However, Newton's hub/disc aperture is not through the hub/disc.

Baumgartner teaches the hub/disc aperture (at 20 in Fig. 1) through the hub/disc in order to attach the disc 22 to the shaft 16. Similarly, Youngs teaches the hub/disc aperture through the hub/disc (at C in Fig. 1) in order to attach the disc B to the shaft C.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to form the Newton's hub/disc aperture being through the hub/disc in order to attach the disc to the shaft as taught or suggested by Baumgartner or Youngs.

13. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: Abby (handle 46) and Kammeraad (handle 32).

14. Applicant's arguments filed June 29, 2005 have been fully considered but they are not persuasive.

With respect to the information disclosure statement, Applicant stated that Applicant had enclosed the second and final page of the JP 1-127275. However, the Office has not received the second and final page of the JP 1-127275. Therefore, it has not been considered. Applicant is advised that the date of any re-submission of any item of information contained in this information disclosure statement or the submission of any missing element(s) will be the date of

submission for purposes of determining compliance with the requirements based on the time of filing the statement, including all certification requirements for statements under 37 CFR 1.97(e). See MPEP § 609.05(a).

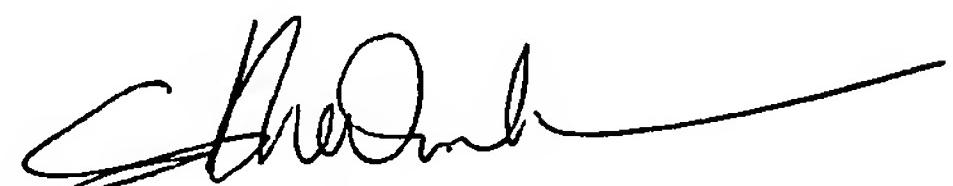
15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vinh T. Luong whose telephone number is 571-272-7109. The examiner can normally be reached on Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Charles Marmor, can be reached on 571-272-7095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Luong

September 12, 2005



Vinh T. Luong  
Primary Examiner

## **ATTACHMENT**

